

Remarks

The following remarks are responsive to the Office Action of March 13, 2008, which was made Final.

At the time of the Office Action, claims 1-26 and 28 were pending. Claims 14-24 were withdrawn from consideration because of a Restriction Requirement. Claims 25, 26 and 28 were rejected under 35 U.S.C. §102(b) as anticipated by Ishii (U.S. Patent No. 5,539,456). In addition, claims 1-13 were rejected under 35 U.S.C. §112, second paragraph, as being incomplete.

Claims 1, 5, 6, 7, 9, and 25 are amended in the present response. No new matter is introduced by the amendments. Claims 14-24 that were withdrawn by the Examiner are now canceled without prejudice or disclaimer. The Applicant reserves the right to submit claims 14-24 in one or more continuing applications.

It is submitted that the present response is submitted in accordance with 37 CFR 1.116 to place the application in form for allowance. The amendments require only a cursory review by the Examiner because the amendments mirror language already considered by the Examiner and do not necessitate a further search. To this end, the Applicant respectfully requests entry of the present response and reconsideration of the claims.

Claim Rejections – 35 U.S.C. §112

The Office Action rejects claims 1-13 under 35 U.S.C. §112 second paragraph, for failing to include essential steps to the claimed method. More specifically, the Office Action rejects claims 1-13 for failing to explicitly recite collecting optical charges and measuring an average brightness. The Applicant contends that the step of collecting optical charges is inherently included in the step of measuring an average brightness. However, to expedite prosecution, to comply with the Office Action's requirement of form, and to put the claims in better form for allowance, claims 1, 5, 6, 7, and 9 have been amended to explicitly recite collecting optical charges. Support for the amendments can be found, for example, at page 5, lines 6-10.

Applicant respectfully submits that the amendments to claims 1, 5, 6, 7, and 9 render the 35 U.S.C. §112 second paragraph rejection moot, and that the rejection as to those claims should

be withdrawn. Claims 2-4, 8, and 10-13 all depend either directly or indirectly from claims 1, 5, 6, 7, and 9, and as a result, the 35 U.S.C. §112, second paragraph rejection as to the dependent claims should also be withdrawn.

Claim Rejections – 35 U.S.C. §102

The Applicant notes that the Office Action no longer indicates claim 1 to be rejected under 35 U.S.C. §102(b) as being anticipated by US 5,539,456 to Ishii. Although there is no express or explicit statement in the Office Action that indicates the allowability of claim 1, nevertheless, the Applicant understands that claim 1 patentably distinguishes over Ishii and the art of record. The Applicant's understanding is due, in part, to the lack of an art rejection vis-à-vis claim 1. The Applicant's understanding is furthered due to the "Examiner's Suggestions" section on page 4 of the Office Action which states, "The Examiner suggests incorporating some of the timing limitations found in method claims 1-13 into claim 25 in order to overcome the current rejection." It is implied in this quoted portion of the "Examiner's Suggestions" section that claim 1 is allowable.

The Office Action rejects claims 25, 26, and 28 under 35 U.S.C. §102(b) as being anticipated by US 5,539,456 to Ishii. Applicant thanks the examiner for suggesting language that overcomes the rejection. Following the examiner's suggestion, claim 25 has been amended to include the following:

- wherein the timing signal generator generates a first readout signal pulse;
- the light emitting device flashes at a time t1 after the rising edge of the first readout signal;
- the timing signal generator generates the rising edge of a second readout signal pulse at a time t2 that is after time t1;
- the image sensing portion collects charges and transfers the charges to the image signal processing portion;
- the image signal processing portion outputs to the microcontroller an image signal relative to the charges;
- the microcontroller measures a first average brightness of the image signal at time t2;
- the light emitting device stops flashing at a time t3 after time t2;

the timing signal generator generates the rising edge of a third readout signal pulse at a time t_4 and;
the microcontroller measures a second average brightness of the image signal at time t_4 .

The Applicant thanks the Examiner for the helpful suggestion regarding amending claim 25. As suggested by the Examiner, the features added to claim 25 substantially mirror the language of claim 1, which the Applicant understands is allowable. To this end, the Applicant submits that no further search is needed since the added features were already searched and considered by the Examiner vis-à-vis claim 1. Accordingly, entry of the amendment and reconsideration of claim 25, as amended, are respectfully requested. In view of the foregoing, the Applicant respectfully submits that the amendment to claim 25, which was suggested by the examiner, overcomes the 35 U.S.C. §102 rejection and that the rejection to claims 25, 26, and 28 should be withdrawn.

Conclusion

The application is considered in good and proper form for allowance, and the Examiner is respectfully requested to pass this application to issue. If, in the opinion of the Examiner, a telephone conference would expedite the prosecution of the subject application, the Examiner is invited to call the undersigned attorney.

Respectfully submitted,

/brian c. rupp/

Brian Rupp, Reg. No. 35,665
One of Attorneys for Applicant(s)
DRINKER BIDDLE & REATH LLP
191 N. Wacker Drive, Suite 3700
Chicago, Illinois 60606-1698
(312) 569-1000 (telephone)
(312) 569-3000 (facsimile)
Customer No.: 08968

Date: May 7, 2008